

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERIC R. FIERRO, and
AUGUSTIN F. GRANADO,

Plaintiffs.

vs.

No. CIV 18-0980 JB\KBM

JERRY ROARK, TRAVIS DUTTON,
JAMES BREWSTER, GREG MERCANTEL,
STATE OF NEW MEXICO, GOVERNOR
SUSANA MARTINEZ, NEW MEXICO
DEPT. OF CORRECTIONS,

Defendants.

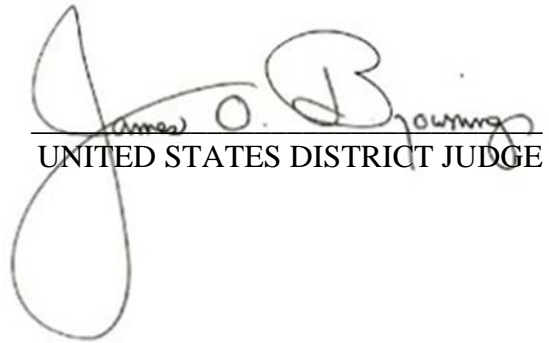
**MEMORANDUM OPINION AND ORDER ON MOTION FOR VOLUNTARY
DISMISSAL**

THIS MATTER comes before the Court on the Plaintiffs' Motion to Dismiss. Motion to Joinder Cause's For Dura and Ayer's do to Procedural Error's We Seek Dismissal to Redact Information to Correct Procedral Error's and to File a Proper Motion to Joinder Cause. Pursuant to Rule 41 Dismissal of Action's (A), (B)., filed November 13, 2018 (Doc. 4)("Motion"). Plaintiffs Eric R. Fierro and Augustin F. Granado seek to voluntarily dismiss this action, without prejudice, under rule 41(a) of the Federal Rules of Civil Procedure. The Court grants the Motion pursuant to rule 41(a)(1)(A).

Under rule 41(a)(1)(A)(i), a plaintiff can voluntarily dismiss a case "by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Under rule 41(a)(1)(A)(ii), a plaintiff can voluntarily dismiss a case "by filing . . . a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A)(ii). A stipulation of dismissal under rule 41(a)(1)(A)(i) or (ii) is self-executing, and

immediately strips the district court of jurisdiction over the merits. See De Leon v. Marcos, 659 F.3d 1276, 1283 (10th Cir. 2011); Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003)(stating that, under rule 41(a)(1)(A)(i), a “voluntary dismissal is self-executing, i.e., it is effective at the moment the notice is filed with the clerk and no judicial approval is required”)(internal quotation marks omitted); Smith v. Phillips, 881 F.2d 902, 904 (10th Cir. 1989)(concluding that a rule 41(a)(1)(A)(ii) stipulation cannot be conditioned by the court and that, once the stipulation is filed, the action is at an end).

IT IS ORDERED that the Plaintiffs’ Motion to Dismiss. Motion to Joinder Cause’s for Dura and Ayer’s do to Procedural Error’s We Seek Dismissal to Redact Information to Correct Procedral Error’s and to File a Proper Motion to Joinder Cause. Pursuant to Rule 41 Dismissal of Action’s (A), (B)., filed November 13, 2018 (Doc. 4), is granted, and this case is dismissed without prejudice.



UNITED STATES DISTRICT JUDGE

Parties:

Eric R. Fierro
Augustin F. Granado
Lea County Correctional Facility
Hobbs, New Mexico

Plaintiffs pro se